

Approved: November 21, 2013

Posted: November 22, 2013



Town Council Meeting Minutes

Thursday, November 7, 2013, at 7:00 PM, in the Matthew Thornton Room

Chairman Rothhaus called the meeting of the Town Council to order at 7:00 p.m. Present at the meeting were Vice Chairman Yakuboff, Councilor Boyd, Councilor Dwyer, Councilor Harrington, Councilor Koenig, Councilor Mahon, Town Manager Eileen Cabanel, and Finance Director Paul Micali.

Pledge of Allegiance

A member of Scout Troop 424 led in the Pledge of Allegiance.

Announcements

Regular meetings of the Town Council will be conducted on Thursday, November 21st, December 5th, and December 19th at 7:00 p.m. in the Matthew Thornton Room.

Merrimack's tax rate has been set at \$23.91, which is an increase of \$.70. Of that increase, \$.15 is attributed to the Town's portion and includes all settled contracts. The portion attributed to the School is \$.47, and the County \$.08. Property tax bills will be due on December 18, 2013.

There will be a Veteran's Day March on November 11th at 11:00 a.m. starting at Town Hall to the Last Rest Cemetery. The Police Honor Guard will be participating.

The Winter Parking ban will be in effect November 15th through April 15th. No vehicle or trailer shall be parked on any public street or highway from 11:00 p.m. - 6:00 a.m.

Merrimack's Holiday Parade and Tree Lighting Ceremony are scheduled for Sunday, December 1st, starting at 3:00 p.m. from The Commons Shopping Plaza. The parade will end up at Abbie Griffin Park where the Tree Lighting Ceremony will take place immediately after. The rain date is Sunday, December 8, 2013.

The Parks and Recreation Department is accepting registrations for their "Santa Calling" program. This program is open to the children of Merrimack, ages pre-school through second grade. Calls will be made to the children on the evenings of Tuesday and Wednesday, December 17th and 18th between the hours of 6:00 and 8:00 p.m. Registration forms for both the parade and Santa Calling are available at Town Hall, the Public Library, and the website, www.merrimacknh.gov.

Comments from the Press and Public

Mike Malzone, 8 East Chamberlain Road

Spoke of noise problem occurring in his neighborhood resulting from an ongoing construction project. Mr. Malzone stated he attended and spoke at Planning Board meetings regarding the hours of operation that were observed when construction took place previously. He has no concerns with the project itself, simply the hours of construction. He was assured by the individual responsible, that sound would not become an issue. Unfortunately, his concerns have been realized. He has gone to the Community Development Department and filed the reports required to initiate a problem finding mission. Only recently and after making a few phone calls following up did he receive any information back.

This project is not that of a private homeowner but instead a large, full-scale commercial construction project. Mr. Malzone stated he understands there is no sound ordinance in Town; however, residents are entitled to peace and quiet especially at such a later hour. After contacting the police, he was informed there is nothing they can do. He remarked had the call been related to a homeowner complaining of another homeowner disturbing the peace, action would have been taken. He questioned what course of action remains to address the situation, and stated a desire for the Council to provide assistance.

Addressing the issue of the Council's toll discussion, Mr. Malzone stated he does not mind the Council spending his tax dollars on suing the State. He noted he was on the Town Council when it met with the Executive Council, and was looked in the eye by Ray Wieczorek who said basically you people wanted the tolls, you better shut your mouth and pay for them. He had also stated any new road built on the Everett Turnpike would always have a toll. The problem with that is there is now a new ramp off of that road, which does not have a toll, and is named after the man that told us to zip it and pay. Mr. Malzone reiterated he has no issue with his tax dollars being used for a lawsuit because it is no longer about equity and costs, it is about politics.

Michael Mills, 7 Arbor Street

Stated the construction noise Mr. Malzone spoke of is a problem that was been brought before the Council and other organizations in Town back before the mall was approved. He questioned why there is not in place a reasonable noise ordinance that would prevent construction projects from starting prior to 7:00 a.m. and ending by 5:00 - 6:00 p.m. as well as prohibiting construction on Sundays. He remarked all surrounding communities have some type of noise ordinance in place, and he is unsure why the Council has not introduced one.

With regard to the toll discussion, Mr. Mills stated as a long-time resident of Merrimack he is tired of discussions of tolls. He spoke of meetings where the developer of the Merrimack Premium Outlet stated he would get rid of the tolls (at a minimum Exit 10) if the project were approved. He stated his belief there is some discussion of removing the toll at exit 12, and commented if the toll is not fair to those who live at exits 10, 11, and 12, why would exit 12 be the only one looked at. He questioned whether the intent was to divide the Town in half so that those residing near exit 12 do not have to pay a toll while those residing near exit 10 do. He stated it to be time for the Town to stand up and say we are not paying a toll. He questioned why this has not already occurred and stated residents are looking to the Council to take action. He commented it is time to take the next step, even if that is a lawsuit. He remarked, in his estimation, it is costing him in the neighborhood of \$400/year. He questioned why he is being taxed while his neighbor in Nashua is not.

Recognitions, Resignations and Retirements - None

Appointments

1. Highway Garage Update Presentation

Submitted By Vice Chair David Yakuboff

The Town Council to consider the review and acceptance of the recommendations of the Highway Garage Committee.

Vice Chairman Yakuboff noted the Highway Garage Committee was charged with bringing forward recommendations for the facility. A PowerPoint Presentation was provided (copy attached). The presentation depicted the strategy and goals. The HKT preliminary design was used as the starting point of discussions. Consideration was given to utilizing the existing building, constructing a new building, and a combination of both approaches. The committee discovered the existing building could be

utilized. The structure has some deficiencies, which can be addressed. Utilizing that structure would allow the Public Works Department (PWD) to continue its operation(s) while construction is underway.

An assessment was performed of needs versus wants. Employees were tasked with assigning priority to an established list of needs/wants. Consideration was given to both employee and equipment needs. The item reaching the top of the priority list was locker room/shower/bathrooms. Twenty seven employees currently share a bathroom facility that has one stall and two urinals. The area currently used as a locker room is an old closet that was transformed. The existing shower stall is not inviting. The item identified as the next highest priority was the lunchroom, kitchen, training (all purpose room). The existing lunchroom is a haphazard room that has within it two folding tables, some furniture (recovered from the transfer station), and a microwave. The item reaching third on the list of priorities was vehicle staging area with possible storage area. HKT originally recommended vehicle staging for just about every piece of equipment within the fleet. The committee discussed how many pieces of equipment have to be turnkey ready to respond in a snow storm. That number (8-10) was used to ensure the staging area proposed would be adequately sized, and resulted in a significant reduction to costs.

Vice Chairman Yakuboff spoke to the expensive nature of the equipment and the extended lifespan when stored indoors. Vice Chairman Yakuboff noted the gas pump upgrade is required for safety purposes, and will be a budgeted item and not part of the highway garage project.

The proposed wash bay is an area where the equipment can be safely hosed off indoors as opposed to the current practice, which is neither efficient nor conducive to employee safety. Identified were shortfalls of the current facility, which include adherence to code, e.g., building, mechanical, fire, and OSHA issues as well as the age and design of current storage. An example given was the insufficient building height to allow the Fire Department's ladder truck to be lifted properly to perform routine maintenance. Also noted was the fact the PWD garage services over 100 pieces of equipment, e.g., equipment belonging to the Highway Department, Building & Grounds, Police, Fire, Code Enforcement, and Solid Waste Department, and upwards of 199 pieces when considering smaller equipment such as compressors, etc.

Photos were provided of the existing building, which has been piecemealed over time, the proposed location for a new structure, and a conceptual rendering of the overall facility upon project completion.

Vice Chairman Yakuboff reiterated construction could begin while operations are ongoing within the existing facility. Once the new building is constructed, work would begin on the existing structure. A portion of the existing building would be demolished while the portion supported by the steel frame would remain. The building would be re-skinned, a new roof put in place, and the electrical wiring would have a complete overhaul.

The committee recommends constructing a new 13,965 sq. ft. facility and rehab of the existing 9,200 sq. ft. highway garage for vehicle storage. Total project cost is estimated at \$3.3 million. If a 30-year bond were let, the average cost for a \$300,000 home would be \$27/year.

A video presentation was provided. The presentation described the highway operations building as basically a large warehouse with partition walls that have been created throughout the years to separate administration areas such as reception, supervisory offices, locker rooms, lunch room, etc. No capital reinvestment has occurred over the years. Personnel have made due on their own and made changes as needed. With each so-called improvement, the electrical system was adjusted to accommodate new needs. Personnel spaces are sub-standard. The inadequate size of the bathroom facilities was reiterated; 1 stall and 2 urinals for nearly 30 employees. It was noted during snow storms or other emergency events all hands are onsite, which shines a light on the inadequate size of the facility. In snow events,

which can last 24-36+ hours, employees returning to the facility in need of rest/nourishment, have no area for that.

The Town of Merrimack has four major investment areas that are made on an annual basis; personnel, facilities, vehicles, and road infrastructure, and the belief is the proposed project incorporates all four of those major investment areas.

The ability to pre-stage winter operations equipment before a storm was addressed in the video. Ideally the department would be able to load a plow truck up with sand/salt and bring it inside a building where it is climate controlled to avoid the material freezing in the back of the truck. If a call went out at 2:00 a.m. the Foreman would call an operator who could come in, perform a pre-trip inspection inside the building, where it would not be necessary to clear snow and ice from the equipment first, hop in, start it up and get onto the roads. Presently the operator has to come in, clear off the snow and ice, warm the vehicle up, do somewhat of a pre-trip inspection, get loaded up, and then get on the road. A great deal of operational efficiency could be gained with the ability to pre-stage equipment in the garage. Due to current space constraints, only about 4 pieces of large winter equipment (out of the 20 or so) can fit in the garage.

There is an industry rule of thumb for mechanics and their shop space; at least 1 ½ bays per mechanic on staff. Currently there is a spillover issue where the bays on the equipment maintenance side of the garage fill up with equipment. When that spills over it has to take place on the highway side where there are no lubrication handling systems, air systems, electrical connections, lifts, etc. One of the benefits of the current building is that the steel frame construction has held up reasonably well throughout the years. The exterior cladding, insulation, roofing, and utilities inside of the building should be overhauled, but to be able to reuse the existing skeleton of steel allows for savings to be achieved and to give the highway division its own area for storage, staging, and workshops. The increased workshop space will allow employees to avoid tripping over material while looking for a tool or piece of equipment. Vice Chairman Yakuboff added, by utilizing the existing building with a full rehab as well as adding an additional building, a 40 year old problem is solved and the facility is brought into compliance with existing regulations.

Safety is an issue that would be addressed with a new facility. Some of the existing systems are 35-40 years old. Electrical systems such as air, fire sprinkler, gas, etc. need serious upgrades, but also need to better suit the work being performed onsite. The proposed new facility would allow personnel spaces to be removed from areas employees are exposed to exhaust, dust, grinding, welding, air compressors, which fire off throughout the day, etc.

MOTION made by Councilor Yakuboff and seconded by Councilor Dwyer to accept and endorse the Committee's recommendations in building the new highway garage and further move the findings to the Warrant Article in the amount of \$3.3 million to be placed on the April 14th Ballot and also allow the Town Manager to begin the Request for Qualifications (RFQ) process to hire a Construction Manager and Architect/Engineer for this project, and allow her or her designee to sign all necessary paperwork related to the process

ON THE QUESTION

Chairman Rothhaus remarked he is pleased with the ability to store the equipment given the efficiencies and safety aspects that could be gained. Vice Chairman Yakuboff noted the proposal, as currently presented, would provide the ability to have 8-12 vehicles pre-staged. In a typical storm, in addition to smaller trucks, there are 18 six-wheeled vehicles utilized. When asked what the cost differential would be to accommodate all of the large vehicles. Vice Chairman Yakuboff stated the original quote to have

been \$1.7 million just for the garage and the storage of the additional vehicles. He remarked when HKT came forward after the second go around the projected cost for the total project was \$8.9 million; a cost too great to be considered. He stated, in the event bond proceeds remain upon project completion, consideration could be given to the addition of a small storage area to store the remaining vehicles.

When asked what the cost would be to incorporate the additional storage into the overall project, Councilor Dwyer responded when HKT first provided the \$8.9 million cost it was for a square foot number that would store all vehicles. The Committee knew that number would not be accepted. They began scaling back and placing focus on the priorities identified through the needs/wants assessment. The first three priorities were personnel related. He stated his belief that is what the project turned out to be in the end. The Committee looked to scale the project back to the point where it was believed approval of the townspeople could be gained while still accomplishing the goal of gaining a good highway facility. What is lost is the extra storage space for handling the millions of dollars' worth of equipment. Rehabbing the old building will accomplish quite a bit. At that price, \$3.3 million achieves success, and if half a dozen or so pieces of equipment are left exposed to the elements that is simply the reality of what it costs to put up a \$3.3 million facility versus something else. Chairman Rothhaus agreed; however, stated a desire to understand the cost of additional storage space. Councilor Dwyer stated the approximate cost for the additional storage to be \$1.7 million.

Vice Chairman Yakuboff spoke of the design of the building and commented if adding sections that would impact the straight line nature of the construction, overall cost would be impacted. Town Manager Cabanel noted consideration could be given to the cost of a basic storage facility being incorporated into the general operating budget rather than utilizing bond proceeds.

Councilor Boyd questioned whether there is concern related to the flat roof, e.g., snow removal. Vice Chairman Yakuboff stated the question would be addressed with the architects; however, commented when adding a flat (membrane) roof you are adding more costs to the project. If added properly and the warranty adhered to, you can achieve a 20-30 year lifespan with proper maintenance. The cost differential between a flat roof and a peak roof is approximately 15-17%.

When asked, Town Manager Cabanel stated the new construction would be 13,965 sq. ft. and what would remain of the existing structure is 9,200 sq. ft. (more than double the current size of the facility). Councilor Boyd questioned the impact on utility costs understanding energy efficiencies could be gained. Vice Chairman Yakuboff stated costs savings could be achieved. Councilor Boyd questioned costs associated with green initiatives, e.g., Photo Voltaic (PV) cells on top of the roof, etc. Vice Chairman Yakuboff responded the Committee was informed payback on such initiatives could not be achieved during the building's lifespan. Councilor Boyd stated a desire to have that data available. Vice Chairman Yakuboff remarked if a study were desired, an engineer would have to be contracted to do that work.

Director Micali remarked the second part of the motion is for the Town Manager to begin the process of hiring a Construction Manager and Architect/Engineer. Those are the types of questions that will be posed of these individuals, once hired. He pointed out the conceptual drawing includes windows up top to allow for natural light. They may or may not be incorporated depending on costs. Issues such as that can be resolved once an architect is on board to design the building and begin forward movement.

Councilor Boyd requested clarification the \$3.3 million is a not to exceed amount. Vice Chairman Yakuboff stated agreement. He added there may be instances of tradeoffs that could result in a different design and/or savings, but the amount could not be exceeded. There will be decisions that will be made along the way with the Construction Manager and the owner of the project, which will probably be the Town Manager and Finance Director. Councilor Boyd stated his gratitude for the work put into

presenting the project. Councilor Koenig stated his appreciation of the depth and expansiveness of the presentation provided and the Committee's work in scaling back the project to one which is more affordable to the community-at-large, and focused on needs.

Councilor Mahon noted the tax impact stated (\$27/year on a \$300,000 home) would be the highest amount of impact in a single year over the lifespan of a 30-year bond. Director Micali explained if the bond were let in July the first 6 months of interest would be due in January; however, if issued in January, the first interest payment is not paid until July of the following year. If a bond was issued in July and an interest payment was due in January there would be a \$.03 impact on the tax rate. If not issued until January of 2015, the first payment would not be due until July of 2016; therefore there would no cost associated with the bond or interest in 2014-2015, but there would be a full payment beginning July of 2015, which would have a \$27 impact and be the highest year of impact.

Councilor Harrington thanked the committee for the presentation, and provided her suggestion, in future discussions, code violations be stressed. She remarked the violations were unbelievable not only in terms of safety of employees, but in terms of the Town's liability as well. Councilor Dwyer commented on the intent to produce additional videos between now and April. Vice Chairman Yakuboff noted he and Councilor Dwyer would be creating a show for cable, which would provide additional information on code violations, etc. It is their intent to provide as much information to the voters as possible.

Vice Chairman Yakuboff commented, from a bonding and debt standpoint, the Town is in a very good position to move forward with the project. It would be the first municipal building constructed since the '80s. When asked about the total bond cost and whether a 30-year term is typical, Director Micali noted consideration was given to the useful life of the building (approx. 40 years) as well as the fact that in three years' time, one of the existing bonds will be paid off. At that point in time, bond payments would basically be the same as they are currently going forward for the next 27 years. Vice Chairman Yakuboff commented on the timing with which the project would be undertaken and the favorable interest rates.

When asked why the gas pump upgrade would not be included in this project, but instead addressed through the general budget, Vice Chairman Yakuboff stated the cost is likely less than \$100,000, and apparently not worth putting into the bond. He added the gas pump has to be addressed due to safety issues. Councilor Boyd stated his appreciation for the public education aspect that will be provided, and remarked that type of effort has been missing from previous bond requests.

MOTION CARRIED 7-0-0

The Council recessed at 8:20 p.m.

The Council reconvened at 8:30 p.m.

Public Hearing - None

Legislative Updates from State Representatives

Representative Kathleen Stroud, Municipal and County Government Committee

Representative Stroud stated a desire to inform the Council of pending legislation, which came out of a discussion that took place in Concord a few weeks earlier. Knowing the Department of Revenue Administration (DRA) has had some trouble setting the tax rate, enabling legislation is being brought forward, which would allow municipalities and towns to set their own tax rate. There would be established parameters, which have yet to be determined, and the rate would ultimately have to be approved by the DRA. She questioned whether members of the Council objected to the legislation.

Councilor Mahon noted such a proposal was attempted about 8 years ago and was unsuccessful. The basic problem is that several other agencies, both State and County, are responsible for providing information necessary for setting the tax rate. Without that information it doesn't matter who is responsible for setting the tax rate, it cannot be done.

Representative Stroud remarked the legislation would provide some semblance of local control. She added it was already known what the tax rate would be in Merrimack (was very close to actual), it was not necessary for the DRA to identify the rate. Councilor Mahon commented there is always a temptation to cook the books, and there has to be some safeguard in there that ensures the elected body is not changing the numbers to make them look good. That might have been a piece of why the legislation was not successful the last time it was introduced.

Town Manager Cabanel stated she would be in favor of the legislation. She noted in each of the three municipalities of Merrimack's size where she has worked each had knowledge of what their tax rate would be, and were always within \$.01 of the actual rate. This year a delay was caused by the DOE not receiving the school's information, and therefore the school not being able to provide information to the Town. It has been suggested that each element of the taxes should send out their own bill. She stressed, what the DRA does is simply confirm the figures.

Representative Stroud restated it would be enabling legislation and each municipality could choose whether or not to set their own tax rate.

Director Micali remarked this year the delay was related to the school; however, there have been several years where the delay was related to the timeliness of the submission of information from the Village District. Although their information has nothing to do with setting the tax rate, the DRA requires it. He questioned whether the requirement is identified in State law or simply a policy of the DRA, and requested Representative Stroud assist in determining which it is.

Councilor Mahon stated his belief it is a good concept, but there are a lot of things that get in the way, one being DRA's fear that the municipal services division will become obsolete. Representative Stroud stated once she is provided with the bill she will present it to the Council to provide input. Councilor Mahon remarked, in the previous legislation, one of the criteria used for allowing a municipality to set its own tax rate was the requirement that a certified audit be performed.

Representative Jeanine Notter

Spoke of a Petition of Redress and Grievance. The Petition is titled Article 32 – Petition to Remove Select F.E. Everett Turnpike Tolls. Although desiring to see all of the tolls removed, it was believed the chances of success would be greater by using the language “select tolls”.

The summary of the Petition reads in part:

“We, the undersigned people of New Hampshire, come forth to address and instruct our New Hampshire Legislature regarding the tolls at some of the on/off ramps at the F.E. Everett Turnpike. For well over ten years, through various Legislators, the people living in the area of these toll exits have unsuccessfully attempted to get relief from this undue burden of these tolls. We bring our grievances to the General Court according to the New Hampshire Constitution Part 1, Article 32, which states “The people have a right, in an orderly and peaceful manner, to assemble and consult upon the common good, give instructions to their representatives, and to request of the Legislative body by way of Petition and redress the wrongs done to them and of the grievances they suffer.”” The Petition goes on to quote

different parts of the New Hampshire Constitution, e.g., Part 1, Article 10, Part 1, Article 12-a, Article 38, etc. and concludes:

“We the people of New Hampshire as well as the New Hampshire people living in the area of these toll exits, for the reasons stated above, brought forth in testimony do hereby submit to the General Court this constitutionally supported Petition asking for a hearing to be scheduled at the General Court’s earliest convenience for the purpose of finding a peaceful resolution to this longstanding burdensome issue.”

Residents interested in signing the Petition can do so through the website, www.nhredress.org, via e-mail Petition@NHredress.info or can call Representative Notter.

Senator Peter Bragdon

Stated back in February of this year a discussion took place around the toll situation in Merrimack. At that time, it was noted for each of the past 15 years there have been bills in the Legislature regarding doing away with the Merrimack tolls. Each time the argument has been we have been paying for them for too long and they have paid for themselves. The same strategy is always tried and always has the same result because it is factually inaccurate. When the presentation is made we have been paying these, these are paid off the figures are brought forward and show that is not true.

He had suggested starting a Bill in the Senate with the thought process if you can get a Bill to pass one house or the other there are some shortcuts you can take, some horse trading that can occur. Everyone knows a standalone bill for the Merrimack tolls is not going to pass the House; it never has. For Senate Bill 3, which met a very well expected death, the purpose was not to have a Bill that passed both the House and the Senate and went to the Governor, it was more designed as a vehicle to get something to actually pass one body or the other, and for the first time in at least 15 years a Bill passed not only a committee in the House or the Senate, but actually passed the full Senate.

Senator Bragdon remarked the fact that the subject matter of toll relief for Merrimack has passed puts it in play for the rest of this legislative session (until July of next year). He urged the Council to be cautious not to do something to undermine that support in the Senate because as long as it has that Senate support it comes into play. That Bill was sponsored by him and a number of representatives from Merrimack as well as Senator Morse, who at the time was Chairman of the Finance Committee, and is currently the Senate President. He and Senator Morse have discussed this numerous times of late, and it still has his full support. Toll relief for Merrimack is very important for him, and they are working on ways to get it through, which he stated he probably should not talk about too much publicly for fear of tipping the hand, but reiterated there are numerous options available.

He remarked he understands it is an issue that is frustrating to folks in Merrimack and to the Council, but if the Council wants the ability to have a legislative solution to this, it is very important to preserve its strongest asset, which is the fact the Senate has taken a position on this. He remarked when any Legislator reads in newsprint that someone is going to sue the State, there are a few reactions. One is, for some, they are not going to vote for an issue that is currently before the courts. If the issue is going on in the courts they do not want to interfere with it, will wish to stay away from it, and will kill the Bill. Others say we’re going to have to spend a couple hundred thousand dollars to fend a lawsuit and these people want us to pass this for them; no way.

Senator Bragdon stated his belief the Council’s strongest position is to take what it has now, which is the support of the New Hampshire State Senate and use that to its best advantage in the coming session. He stated there to be numerous discussions taking place about how to parlay that into something beneficial

to Merrimack that would potentially go beyond just Exit 12. He remarked it does not matter that the Bill that passed the Senate is just for Exit 12, the fact that it is toll relief puts a lot of things in play. He urged the Council to look at the situation strategically and not get bogged down in some of the things of the past where we are arguing about whether or not we have paid it off, because he believes the record will show that it has not been paid off. In fact he believes the record will show the total net revenues from the Merrimack tolls, since they were built, are \$26 million. The cost to construct the tolls was \$50 million, not including any of the interest charges. To lead with the financial argument is what he believes has cost victory in the past.

He stated his belief, using a sports metaphor; we are in the second half of the game now. The first half was the first Legislative session, the ball is past mid-field at this point and probably pretty close to the end zone because the Senate has a number of options in play to try and do things that can help you out.

Chairman Rothhaus stated his appreciation of the strategy conversation; however, commented it saddens him that a public servant would take offense and the position of an unwillingness to provide assistance.

Councilor Boyd questioned how he is supposed to take what he is being told at face value when a House committee voted 15-0 to kill the bill. He remarked had the vote been different he could see where the Senator is coming from. He stated his opinion what has been proposed by Councilor Dwyer is appropriate in light of what the House has communicated to the community.

Senator Bragdon remarked he can understand that and to him, being close to it, it was not unexpected. In reality, it was a bill on a specific matter that, at least some on that committee he knows want to roll into something else that is coming up this year in the House. A standalone bill for a specific thing that they want to put into something else does not serve their purpose well. He can see the reasons why they did it. He can understand why that is disconcerting, but it was not unexpected.

Vice Chairman Yakuboff remarked at some point in time, you reach the point where you no longer trust people, and he is of the belief Merrimack is at that point. He stated, as far as he is concerned, everyone wants to talk the talk but nobody wants to walk the walk. He stated his belief what Councilor Dwyer has proposed is a good idea and he intends to support it.

Senator Bragdon stated for 15 years the people in Merrimack tried to get at least a House or Senate committee to support them. It never happened until this year. In fact not only did a committee support Merrimack, an entire legislative body supported Merrimack. Merrimack has accomplished in the last 6 months what nobody could accomplish in 15 years. He suggested the Council try and see how that plays out in the second half of the session. Vice Chairman Yakuboff remarked the fact the vote failed 15-0 leaves him believing there is no light at the end of the tunnel.

Senator Bragdon remarked he understands there is no guarantee. He never promised the bill would pass, but he did promise to do his best to get it as far as possible, and believes great progress has been made. He remarked a court case might not make it clear either, and from a legislative perspective, if you sue the State and lose no one will pay any attention to you in the Legislature.

Vice Chairman Yakuboff remarked a Judge might provide an ending date of when the last payment, which no one else can. Senator Bragdon stated the greatest net revenue the Merrimack tolls have ever generated was \$2.3 million. The interest on the bond is \$2.5 million. The Merrimack tolls have never generated enough revenue to even pay the interest payments on an annual basis. If waiting for the bonds to be retired because of the revenue generated by the Merrimack tolls, it will never happen.

Chairman Rothhaus commented the math has been done, and it would be 70 years. Senator Bragdon stated that would be the case if they don't keep applying the interest. That assumes that the bonding agencies aren't charging extra interest for all the time it is not being paid.

Vice Chairman Yakuboff responded, win or lose, the Supreme Court could issue a statement saying here is the due date, here is the final date the bond is paid off, and no one else can provide that. Senator Bragdon reiterated Merrimack will never pay off the tolls. Vice Chairman Yakuboff re-stated a Judge could identify a point in time. He remarked you can say what you think the Supreme Court would do, but you cannot say for sure what will occur. Senator Bragdon responded he understands that, but believes the strongest point right now is that Merrimack has the Senate support. He encouraged the Council not to try to erode that.

Councilor Koenig commented he agrees with the Senator the Town will not win on the financial aspect and understands what Councilor Yakuboff was pushing for was a financial resolution. He is of the belief the Town will win by understanding that Nashua and Manchester are spending toll money hand over fist to upgrade and enhance their exits, and nobody there is paying tolls. He stated he would like to see us get rid of the concept of highways versus turnpike and get rid of tolls as it is a bad way to try and finance it, e.g., it is a tax on certain segments and not others.

Senator Bragdon responded he has not taken the strategy that far, but the reason it has gotten as far as it has and the reason it has passed the Senate is because of those arguments about how the F.E. Everett Turnpike started with an exit in Manchester and an exit in Nashua and if you got on at one end you would get off at the other end. There are now 27 ways to access the F.E. Everett Turnpike and only 3 that have tolls. That resonates with people. He again urged the Council to give them as many options as possible and not do things that will erode the support that exists now in the Senate.

Councilor Dwyer stated the court system corrects bad deals all the time. He suggested you could go into the process stating it has 80 years to go, but you cannot know what the outcome will be.

Councilor Mahon stated his belief in the 1980s the Town made a deal with the devil. Now we are living with the consequences of that deal. As it has been stated, the debt will never be paid off. With all due respect to his colleagues, he stated the record will not support their position. He remarked courts are reluctant to interfere with actions of the Legislature, which were done legally. If a Constitution issue they will, but if a procedural matter they will take the position; it is up to them. He noted there is nothing in the record (in writing) that speaks to promises made regarding relief of the toll plazas when the bond is paid off. The record is full of letters signed by the former Town Manager and other officials stating acceptance of the Exit 12 toll.

Councilor Harrington remarked she does not believe the money argument will go anywhere. If talking about the Constitution, the argument is unequal application; why all of the improvements done after the tolls were put in place did not have the same criteria applied as was the case with Merrimack. She questioned the constitutionality of Merrimack being treated differently than other communities, and suggested that to be a more valid argument.

Speaking to the concern expressed by Senator Bragdon about moving forward in this manner, Councilor Harrington stated she does not believe both efforts are mutually exclusive, and noted the length of time necessary to conduct due diligence to prepare for the possibility of a lawsuit and determining whether or not there is even grounds to proceed in that direction. She commented if the Legislature is going to be concerned with the Town looking into the possibility then too bad. Senator Bragdon remarked understanding the Town is looking into the possibility would likely be received differently than seeing in newsprint headlines that say Merrimack is going to sue the State and Legislators are fools.

Chairman Rothhaus remarked, although he did not read the newspaper article, he was told it indicated he had stated he was in support of suing the State, which he never said. Councilor Boyd remarked the article identified the Chairman as stating he was more agnostic about it, if it made sense he would support it. Chairman Rothhaus responded if that is how his comments were relayed, it was accurate.

Councilor Harrington stated her appreciation of the Senator trying to give the Council a cautious word; however, she does not believe one action is exclusive of the other, and she will not be intimidated into non-action.

State Representative Tony Pellegrino

State Representative Pellegrino provided the Council with a copy of the Highway Department's budget. He stated his belief the document will provide some historical information. He also provided a copy of the docket of the SB3 Bill and information on its journey through the Senate. He stated his support of the Council in whatever direction it chooses to take. He noted Senate Bill 3 is retained, which means it is not dead, it is not alive, but someone has to come up with it. Through the grapevine he has heard the reason it was retained is so they can hook it on to another bill in hopes of passage. He remarked retaining a bill does not ensure it will come up again. He stated his agreement it is time for the Town of Merrimack to stand up and say enough is enough.

He commented on the representation in Concord; Merrimack has 8 representatives compared to Nashua's 23 and Manchester's 30, and remarked neither one of those communities would be agreeable to toll(s) and they have the muscle to fight such a proposal.

There being no objection, the Council went out of the regular order of business to take up the second item under New Business.

2. Toll Discussion

Submitted by Town Councilor Daniel Dwyer

To see if the Town Council has interest in taking legal action against the State of New Hampshire Department of Transportation to remove the toll booth plazas in Merrimack.

MOTION made by Councilor Dwyer and seconded by Councilor Yakuboff to allow the Town Manager to engage an attorney for the specific purpose of pursuing legal action against the State of New Hampshire regarding the inequities of the existence of the toll exits 10, 11, and 12 in Merrimack on the F.E. Everett Turnpike and to further authorize and appropriate the sum of Five Thousand Dollars (\$5,000.00) for the purpose of hiring the attorney

ON THE QUESTION

Councilor Dwyer requested his fellow Councilors join him in announcing that the Council, in representation of the citizens of Merrimack, are no longer going to accept the abuse that our State Legislators have been forcing on us in regard to the tolls here in our Town. He remarked our founding fathers in their genius of creating our Constitution also created the concept of three branches of government; executive, legislative, and judicial. When legislative abuse is thrust upon its people, the courts have been there to remedy that. He stated his belief it is time for the Council to act in that tradition; to go to the courts and seek relief and justice from a legislature that has for years used Merrimack residents and its businesses as a funding tool like no other.

He went on to state the State's highway funding system has placed an unjust burden on our community like no other in the State of New Hampshire. In bringing a lawsuit against the State, a Judge will decide

the fate of Merrimack. The townspeople have the right to fight this injustice and have their grievances heard and addressed. In the end Merrimack vs. the State of New Hampshire will have a definitive outcome. He stated his belief once the evidence is shown those tolls will be removed. He added a lawsuit by its very nature is a confrontational battle between two parties and the Town must remain steadfast in its fight and never be fooled into thinking the other side will cave in some way.

Councilor Harrington questioned the language of the motion; use of the words pursuing legal action, which would be the outcome, whereas the first step would be acquiring an attorney and determining the strategy. Councilor Dwyer stated his intent to provide the Town Manager the ability to start soliciting and engaging in discussion with attorneys. The motion is intended to get the process started. Councilor Harrington remarked the motion speaks to pursuing legal action as opposed to determining if there is legal action to be pursued. Councilor Dwyer stated his motion is worded to show the intent. His intent would be to hire an attorney and begin the process of pursuing legal action. He remarked, once on board, the attorney would be asked to come before the Council having conducted his/her due diligence, and provide a legal opinion as to the Town's legal standing, etc. If at that time, the majority of the Council votes against moving forward that would be the will of the Council.

Councilor Harrington stated her point to be the need for a subsequent determination and vote on whether or not to proceed in the court system. Councilor Dwyer stated agreement that is what is intended with his motion.

Councilor Mahon agreed the motion should be worded in such a way as to clearly identify the need for further action/consideration by the Council. Chairman Rothhaus agreed the grievance is not about how and when it is paid, but the inequity of the entirety of the situation. He stated he was not anticipating the expenditure of \$5,000, but rather to have someone with greater understanding of the New Hampshire Constitution provide an opinion on that standpoint.

AMENDED MOTION made by Councilor Dwyer and seconded by Councilor Yakuboff to allow the Town Manager to engage an attorney for the specific purpose of pursuing discovery of potential legal action against the State of New Hampshire regarding the inequities of the existence of the toll exits 10, 11, and 12 in Merrimack on the F.E. Everett Turnpike and to further authorize and appropriate an amount not to exceed Five Thousand Dollars (\$5,000.00) for the purpose of hiring the attorney

ON THE QUESTION

Councilor Koenig remarked although he generally understands the intent and fully agrees with the level of frustration with what has occurred and how difficult it has been to get any motion out of the Legislature; however, he has concern with the rhetoric around the presentation. His concern is with the headline that will appear in newsprint; Merrimack doesn't want to be abused by the Legislature anymore, etc. He stated a desire to go through and understand the situation; legal ramifications, where the Town can go forward, etc. That is what the motion is speaking to. He expressed concern with the situation getting away from the Council/Town and becoming a battle before the battle even begins. He touched upon comments made by Senator Bragdon with regard to a concern of losing whatever good will the Town currently has. He stated he could support the concept of checking with an attorney and gaining a clearer picture; however, wishes to make it clear he does not feel Merrimack is out to draw swords and do battle with the Legislature over being abused or anything like that; we are out to try and understand an equity situation and get Merrimack equity in the way the highways are funded in the State. If the courts are the way to do that that is what will be understood after the opportunity has been provided to pursue it further.

Councilor Boyd commented this is a country that fought for liberty and freedom based on no taxation without representation. He suggested this to be an example of the fight Councilor Dwyer wants to pursue, and stated his support of the motion.

Councilor Mahon stated it was our representation that got us into this. The Town went to the Legislature and asked for the toll plaza at what is now exit 10. They agreed to the deal. There was representation because the Legislature took action and the Town initiated it. Councilor Harrington remarked that does not change the inequity of application with regard to everything that has occurred since that time. Chairman Rothhaus agreed other ramps have come into play since that time none of which having the application of a toll. He stated his appreciation of all of the remarks made regarding where we are in the process and not letting the media dictate the direction when discussion and agreement on any actions beyond discovery have not been reached.

Councilor Boyd reiterated tolls are being arbitrarily set, not done through legislative authority. Councilor Mahon stated his disagreement.

Chairman Rothhaus referred to the motion on the floor as a friendly amendment and called for a vote on the motion as amended.

MOTION CARRIED 5-1-1

Councilor Mahon voted in Opposition

Councilor Koenig Abstained

The Council returned to the regular order of business.

Town Manager's Report

The Police Department would like to express their gratitude to the public for all their concerns for Crossing Guard, Arthur Ducharme. He is at home and doing well during his recuperation. The Police Department wants to remind those residents that leave town for the winter or for a period of time to take advantage of their "House Check" program. Please contact Officer Rob Kelleher for more information.

Town Manager Cabanel informed the Council several interviews have been conducted with candidates for the position of Director of Parks and Recreation. A conditional offer is being readied.

Consent Agenda - None

Old Business - None

New Business

1. Review of Proposed Capital Improvement Plan

Submitted by Town Manager Eileen Cabanel and Finance Director Paul T. Micali

The Town Manager and Finance Director will review the CIP that will be presented to the Planning Board on November 12, 2013, pursuant to Charter Article 8-9.

Town Manager Cabanel provided a PowerPoint presentation (copy attached) on the Capital Improvement Program. She spoke of her first year with the Town and discussions at the Council's Retreat regarding depleting capital reserve funds quickly and not replenishing them as well as not funding capital needs. At that time, the capital reserve fund balances were very low and very little was

being expended to address the needs. A formula by which the Town could fund its capital needs was identified.

The first slide in the presentation highlighted the agreed upon funding levels (total of \$1,110,000). The second highlighted what the Administration is proposing (total of \$1,175,000), which includes an additional \$5,000 towards Communications Equipment, an additional \$25,000 towards D.W. Highway Intersection Improvements, an additional \$25,000 towards Highway Equipment, the addition of an allocation of \$10,000 for GIS; total cost of update is in area of \$160,000, a proposed reduction in Sewer Infrastructure Improvements of \$25,000 due to number of projects able to be addressed in the coming year, and the addition of \$25,000 to address Milfoil.

Town Manager Cabanel spoke of the advantageous nature of establishing this type of mechanism for saving for the cost of capital expenses as opposed to issuing debt (bonding). She stated her belief addressing these types of needs in this fashion is one of the reasons the Town has accumulated so little debt.

Director Micali noted the request to allocate \$10,000 towards GIS is to establish the account, which would be funded further in the out years for a project scheduled to occur in FY20. The project would consist of the hiring of an outside consultant, costs associated with aerial photos, software upgrade, etc.

The slide titled Major Projects General Fund highlights (in blue) monies allocated from the Capital Reserve Fund. Sixty thousand dollars (\$60,000) is proposed for the South Fire Station (engineering costs). Ten thousand dollars (\$10,000) is proposed for the McGaw Bridge replacement (engineering costs). Town Manager Cabanel noted, if the Bedford Road Bridge project were looked at on its own, in order for it to meet the hydraulic flows of a 100-year flood, the bridge would have to be substantially higher, which would result in an increased project cost of a minimum of \$1 million. That was avoided by considering all three bridges, Bedford Road, McGaw Bridge and the third which goes across D.W. Highway, as one system. Town Manager Cabanel stated her belief the State is amenable to adding the bridge at D.W. Highway to its list. They finance 80% of costs associated with bridge projects. The alternative to adding the third bridge would be to raise both the Bedford Road Bridge and the McGaw Bridge an additional 3'.

Also listed is \$520,000 for Bridge Replacement-Bedford Road/Baboosic Brook; FY15 is when construction could potentially begin. This project has a cost of nearly \$3 million. In the State bridge fund, there is a total of \$6-8 million/year for all bridges. There is the potential a project of this size could utilize federal bridge monies, which would be more advantageous for Merrimack as Merrimack would not have to contribute funds towards the project; whatever costs are not covered through Federal funding would be covered through State funding. At present, the project is included in the State Bridge Aid Program, and in line for funding.

One hundred thousand dollars (\$100,000) is identified for stormwater drainage improvements, which is a reduction from previous years due to the number of other projects taking place and the uncertainty that \$200,000 worth of drainage improvements could be addressed. Fifty thousand dollars (\$50,000) is identified for Wire Road Intersection Improvements (engineering costs); the project will be brought before the Council in the spring with a variety of options. Also listed is Sewer Line Extension Sunset Shores; \$868,000 for the sewer line extension and \$300,000 for road infrastructure. Sunset Shores/Naticook Lake is the number one project identified in the sewer study, and would completely deplete the capital reserve. The intent is to take \$150,000 out of the paving budget to support this project as well. Those roads should have been paved this year, but it was believed most prudent to push off the paving project to coincide with the drainage and sewer line extension project as opposed to putting down new tar and ripping it up to put sewer lines in.

Town Manager Cabanel remarked the likelihood of a South Fire Station happening when two years later you plan on building another fire station at a cost of \$2 million plus \$1.2 million in 12 extra firefighters is ridiculous. There is no factual information to support the need for a new fire station in the northwest section of Merrimack. She stated she left the line in the presentation as she believes the Council should see what is asked for, but she has put a line through it saying it does not have her endorsement. When asked about the private donation for the Reeds Ferry Fire Station (\$300,000) Director Micali explained there is a trust fund specifically for the Reeds Ferry Fire Station for fire prevention and infrastructure in the Reeds Ferry area. There is a separate trust fund for that alone, which is accumulating interested. The fund was created by Shedd Harris.

Director Micali explained when last addressing Bedford Road (flooding that occurred in 2006 and 2007), FEMA monies were used. The restriction when using FEMA monies is that you are allowed to replace the existing infrastructure, but cannot improve upon it. The road was put back to its prior condition and re-opened. The existing pipe was not sufficient to carry the water forward. Councilor Boyd spoke of how pleased he is with the engineering work that was done on Wire Road and questioned whether Bedford Road would be addressed similarly. Director Micali responded he would have to assume with any bridge project they would do basically the same thing, and noted the same company is designing it.

When asked to explain further how adding work on the D.W. Highway bridge would lessen the cost of work on both the Bedford Road Bridge and the McGaw Bridge, Rick Seymour, Director, Public Works Department, explained when looking at the Bedford Road Bridge and the McGaw Bridge individually, certain design elevations were developed to accommodate both a 50-year and 100-year flood. Water flows from these areas down through the bridge at D.W. Highway and into the Merrimack River. When looking downstream it was noted water bottlenecks at the bridge at D.W. Highway. That bottleneck backs water up all the way to the Bedford Road Bridge. By eliminating that bottleneck they could lower the profiles of both the Bedford Road Bridge and the McGaw Bridge.

Councilor Koenig questioned whether the design would be to lower the overall cross-sectional area of the water flow through the bridge. Director Seymour responded you start off with a certain width and adjust both the width and height. Ultimately you want to be able to take everything in a 50-year storm with one foot of freeboard, which means the water would not exceed 1' below the top of the bridge and in a 100-year storm not go over the top of the bridge. Councilor Koenig remarked his colleagues are saying you are not only lowering the profile but widening it so that the throughput is the same, what you are saying is the width is fixed and you are lowering the profile which means that the cross-sectional square footage of area is reduced and so the throughput of water is actually reducing because there is not backup. Director Seymour remarked it depends on which bridge you are looking at. As an example the ability exists to reduce the height of the Bedford Road Bridge and throughput of the bridge because it is not needed. The square dimension of what is going under and through the bridge is being reduced because of addressing the issue of bottleneck downstream. If that bottleneck is opened up there is no longer a need to worry about hydraulic pressures through the system. Councilor Koenig remarked it is not being widened, the cross-sectional area is reducing.

Slides were shown providing additional detail for each of the major projects, the fiscal years in which work will be performed, and costs incurred.

Funding sources for minor projects, e.g., vehicles, etc. were identified. One of the funding sources identified was Media Cable Franchise Fee. Town Manager Cabanel noted the media fund is accumulating a surplus while the equipment is new and the facility improved. Last year's budget utilized \$80,000 of that fee (\$320,000/year received) to offset the tax rate. Those funds had historically been dedicated 100% to the media fund. With the facility improved and all new equipment, it no longer

makes sense to allocate all of the revenue to a separate fund. The Council will need to determine what percentage of the franchise fee received from cable should be used to fund media operations. Slides were provided detailing the minor projects, funding sources, and the fiscal years in which costs would be incurred.

Town Manager Cabanel stated she feels good about the proposed budget and the work that has gone into it.

Councilor Harrington complimented the Administration with the way in which the budget is presented; comprehensive and logical. Councilor Koenig questioned what became of the reserve fund for north and south sidewalk projects. Director Micali noted a few years prior several reserves, including sidewalks, were combined into the road infrastructure reserve fund.

Director Seymour remarked when he first came to the Town there were many many projects carried over year to year without costs being adjusted, etc. There came a time when he approached the Town Manager and questioned whether the projects would be funded or simply continue to be listed. Being informed they would not be funded, he determined it made no sense to continue to list them. He noted there are some instances of sidewalks included in some of the upcoming projects such as the Chamberlain Road Bridge, which has a good section of sidewalk incorporated as well as the Wire Road Intersection project. Director Micali noted the other bridge projects also have sidewalk components.

Councilor Koenig stated the D.W. Highway Bridge project has to have a sidewalk component. It is necessary to walk into the project believing there will be a sidewalk. He has heard people say there is no way we will do it, it is too expensive. Town Manager Cabanel stated it would be brought before the Council to make that decision.

Councilor Koenig remarked when applicants are before the Planning Board looking to make changes to plans, especially along D.W. Highway, they are asked to put sidewalks in because that has always been part of the plan, at least from the Planning Board's perspective. It was because we had these sidewalk projects in the CIP and we had these programs we could point to that we could say we want to have these sidewalks here. Now they are not there and people are coming before the Planning Board and saying well you don't have a sidewalk project, we asked the guys at PWD, and they said we don't have a sidewalk program any longer. He commented it really makes it difficult to ask someone to put a sidewalk in on a street when departments are telling them we don't have a sidewalk program anymore.

Town Manager Cabanel stated the need for the Council to provide her direction as to what they wish to see implemented. Chairman Rothhaus remarked, for him, a lot of that is driven by development. While it might not be in the CIP he always believed it was in the plan. Councilor Koenig stated his belief sidewalks along the D.W. Highway are included in the ten-year plan. Town Manager Cabanel spoke of the possibility of establishing a capital reserve fund for sidewalks where allocations could be made through the budget process as well as by developers in instances where a particular project could not accommodate sidewalks and in lieu of their construction a financial contribution could be made to the fund. Councilor Koenig stated a desire for the Council to make a definitive statement with regard to how to address the issue of sidewalks.

Councilor Koenig touched again upon the Bedford Road, McGaw, and D.W. Highway bridges. He stated a concern with the order in which the bridges are being worked on. With the Bedford Road Bridge being addressed first and the others 2-5 years down the road the Town would be in a position where, for a 2-5 year period, bridges would be under-designed. Town Manager Cabanel stated they would be under-designed for the 100-year flood. She spoke again of the additional costs that would be incurred if addressing each of the bridges individually (to accommodate 100-year flood) as opposed to

resolving the issue of bottlenecking that is taking place at the D.W. Highway Bridge, which would allow the Bedford Road and McGaw bridges to have reduced profiles.

Councilor Koenig stated his desire for it to be clear the intent is to take the risk that a 100-year flood will not occur during this 2-5 year period. He questioned why, if the philosophy is to build to a capacity for all three, the first project to be completed is not intended to be the D.W. Highway bridge. Town Manager Cabanel explained the State sets aside a certain amount of funding each year in Bridge Aid, which is intended to support the work identified to occur in that particular year on all bridges throughout the State. The Bedford Road Bridge is currently up for funding. The bids came in for the work on that bridge, and it was discovered the profile would have to be 3-4' higher (double the cost) to accommodate a 100-year flood. The engineers looked to the reason why the profile had to be increased and discovered it was because of the bottleneck downstream.

Town Manager Cabanel remarked it is an accurate statement to say there is a risk there; however, she believes the cost savings worth the risk. Councilor Koenig commented there were two 100-year floods experienced recently ('06 and '07).

Director Micali added the bridges are identified, within the Bridge Aid Fund, by year of construction. The bridge causing the bottleneck is not currently included in any plan, although the desire is to have it included. Director Seymour remarked the bridge at D.W. Highway did not overtop in any of the big storms so no one believed it to be a problem. A few years ago the list was modified to move construction on the Bedford Road Bridge ahead of that on the McGaw Bridge because of overtopping that occurred on the Bedford Road Bridge. He spoke to the issue of liability and noted if the McGaw Bridge were lost the Town would not be impacted as it would be if the Bedford Road Bridge were lost. If the State comes back and says it will finance the bridge at D.W. Highway it will still have to be put on the schedule. There are Federal funds available, and a response from the State on their use is pending.

Director Seymour agreed there is some risk because the design height on the Bedford Road and McGaw Bridges has been changed. The question has been posed of the State if the profile of a bridge can be changed during the design process to not meet a 100-year standard if it is known it would reach that standard with the addressing of the bridge at D.W. Highway. Councilor Koenig questioned, with its current design and the current condition of the bridges downstream, if the Bedford Road Bridge would overtop in a 100-year storm. Director Seymour responded it would overtop with the other bridges configured as they are today. It would not wash out, it would overtop. He added, it would not overtop like it did during the last 100-year storm. In that instance, the roadbed was depressed on either side, and, as a result, instead of going over the top of the bridge water went on either side. The concern is always what occurs with the road approaches.

When constructing a bridge they add to the profile of the bridge and almost make a dam out of the roads because they are elevated on either side of the bridge, which is a natural obstruction to the flow and forces flow through the inlet or outlet of the bridge itself. When asked, he stated the span would be at least 3 or 4 times what currently exists.

Councilor Koenig stated a concern with the liability aspect of proceeding in this manner. Town Manager Cabanel remarked the State would also have some level of culpability as they would have to agree to proceeding in this way. Town Manager Cabanel stated the Council does not have to take the risk; there is the ability to move forward with the Bedford Road Bridge and spend the additional funds necessary to construct it in whatever manner deemed appropriate. She reiterated Director Seymour is of the opinion it is not an overly burdensome risk to proceed as proposed; however, acknowledged there is some risk.

Minutes

Approve the minutes from the October 24, 2013 Town Council meeting:

The following amendments were offered:

Page 4, Line 44; add the word “had” between the words “there” and “to be”

Page 8, Line 47; add a comma after the words “He added”

Page 4, Line 42; delete the word “back” after the words “since moving”

Page 4, Line 47; begin a new paragraph starting with the words “Councilor Koenig stated he gets”

MOTION made by Councilor Yakuboff and seconded by Councilor Boyd to approve the minutes of the October 24, 2013 Town Council Meeting as amended. MOTION CARRIED 7-0-0

Comments from the Press - None

Comments from the Public - None

Comments from the Council

Vice Chairman Yakuboff spoke of the Crossing Guard, Arthur Ducharme, being hit in front of the school. He urged motorists coming down Baboosic Lake Road towards Town Hall in the early morning hours to proceed with caution, as it is difficult to see anything with the glare of the sun.

Vice Chairman Yakuboff thanked Nick Lavallee and Justin Slez for the work they did on preparing the video presentation for the Highway Garage.

Councilor Boyd noted the Rotary will be having their Turkey Trot 5K on Thanksgiving. The race starts at 8:00 a.m. Additional information can be found on the website; Merrimack5K.com.

Councilor Boyd reminded the viewing audience Brandon Snell is conducting his Fifth Annual Heroes Blood Drive on November 11th from 2:00 - 7:00 p.m. at the St. James Church.

Councilor Boyd recognized Vice Chairman Yakuboff, Chairman Rothhaus, Councilor Mahon, and all Veterans in the community who have fought for our country. He encouraged the community to come out to the Veterans’ Day Parade and the Memorial Service to thank our Veterans as they are the reason we enjoy the liberties and freedoms we have today.

Councilor Boyd spoke of remarks made during the last two meetings of the School Board during which members have taken the liberty to criticize the Council because of its inability or refusal to meet with them jointly. He stated, although respectful of the members’ rights to express themselves and have opinions, they are not entitled to their own facts. He stated the Council did not refuse the accommodation. It was the determination, from the Council’s perspective, that there was nothing pressing, and the Council wished to postpone a joint meeting until completing the budget season to accommodate a productive conversation. If members of the School Board felt there were pressing issues they wished to speak to now, that should have been brought to the attention of the Council. He commented it is very disconcerting that there continues to be a disconnect in communication between the bodies, and he finds it difficult to ignore boorish and childish comments that come from certain members of the School Board when it could be easily rectified by sending an e-mail or picking up the phone and expressing the desire to meet.

Town Manager Cabanel stated she and Chairman Rothhaus met with the Chairman of the School Board and Superintendent Chiafery regarding the topics the School Board wished to discuss. It was suggested to them, by Superintendent Chiafery that the Council may wish to postpone the joint meeting until the conclusion of the budget season. Chairman Rothhaus informed the Council he spoke with Chairman Ortega a few nights earlier, and he too wishes to avoid the confrontation that has begun. Chairman Rothhaus noted a member of the Town Center Committee reached out to him stating the importance of having those discussions sooner rather than later because of the importance of the projects coming to a conclusion with the crossing of the school property, etc. As a result, he intends to bring the issue back before the Council for further discussion.

Councilor Koenig thanked the Police, Fire, PWD, and PSNH for addressing the issue of the tree that fell at the corner of Danforth Road and Naticook Road. They did a great job addressing that issue and did so in a timely manner.

Chairman Rothhaus spoke of Ms. Anita Creager accompanying a group of Boy Scouts to a recent Council meeting as a way for them to earn a merit badge. He commented on the level of commitment/volunteerism Ms. Creager has given to the community through her efforts with the Scouts, Historical Society, Heritage Commission, etc., and thanked her for her dedication to and support of the community.

MOTION made by Councilor Boyd and seconded by Councilor Harrington to adjourn the meeting. MOTION CARRIED 7-0-0

The November 7, 2013 meeting of the Town Council was adjourned at 11:00 p.m.

Submitted by Dawn MacMillan